

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

APR 19 2007

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2006-0338-PR
	)	DEPARTMENT A
v.	)	
	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
ANTHONY PAUL RAMIREZ,	)	Rule 111, Rules of
	)	the Supreme Court
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20003296

Honorable John E. Davis, Judge

REVIEW GRANTED; RELIEF DENIED

Law Office of Patrick C. Coppen  
By Patrick C. Coppen

Tucson  
Attorney for Petitioner

H O W A R D, Presiding Judge.

¶1 After a jury trial in 2001, petitioner Anthony Paul Ramirez was convicted of theft by control of property with a value of \$2,000 or more but less than \$3,000. The court found he had two previous felony convictions for drug-related offenses and sentenced him to an aggravated, enhanced, twelve-year prison term. We affirmed Ramirez's conviction and

sentence on appeal. *State v. Ramirez*, No. 2 CA-CR 2002-0106 (memorandum decision filed July 10, 2003). Ramirez then filed a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S., alleging various constitutional violations and claiming that trial and appellate counsel had been ineffective in failing to raise the constitutional claims. The trial court dismissed the petition without holding an evidentiary hearing, after which Ramirez filed this petition for review. We will not disturb a trial court's ruling on a petition for post-conviction relief absent an abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find none here.

¶2 At sentencing, the trial court found as aggravating circumstances the presence of accomplices, the offense was committed for pecuniary gain, and Ramirez had failed to “take advantage of past opportunit[ies] for rehabilitation and to deal with his drug problem.” Ramirez claims he is entitled to be resentenced because the trial court erred in giving a jury instruction in accordance with *State v. Portillo*, 182 Ariz. 592, 898 P.2d 970 (1995), and improperly relied on his failure to address his drug problem as an aggravating factor at sentencing in violation of *Robinson v. California*, 370 U.S. 660, 82 S. Ct. 1417 (1962). He also contends that his claims are of sufficient constitutional magnitude that they are not subject to preclusion. *See State v. Espinosa*, 200 Ariz. 503, ¶ 7, 29 P.3d 278, 280 (App. 2001) (claims otherwise precluded under Rule 32.2(a)(3) are not precluded if they are of “sufficient constitutional magnitude”); *see also* Ariz. R. Crim. P. 32.2(a)(1) cmt (same).

¶3 In its ruling dismissing his post-conviction petition, the trial court found Ramirez’s claims precluded under Rule 32.2(a) and rejected his attempt to avoid preclusion by arguing his claims were of sufficient constitutional magnitude that they could only be waived by Ramirez personally. The court also found that neither trial nor appellate counsel had been ineffective for failing to raise these issues. The court denied relief in a detailed, thorough minute entry that clearly identified Ramirez’s arguments and ruled on them in a manner that is factually supported by the record before us and legally supported by the authorities cited therein. We therefore adopt the trial court’s ruling and see no need to revisit it. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶4 Because we conclude the trial court did not abuse its discretion by dismissing Ramirez’s petition for post-conviction relief, we grant the petition for review but deny relief.

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JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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GARYE L. VÁSQUEZ, Judge